IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 951 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTLAL JOITANDAS PATEL

Versus

SENIOR DIVISIONAL MANAGER LIFE INSURANCE CORPO.OF INDIA

Appearance:

1. Special Civil Application No. 951 of 2003

MR CN TRIVEDI for Petitioner No. 1

MR AK CLERK for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

SERVED BY RPAD - (R) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/06/2004

ORAL JUDGEMENT

1. In this petition petitioner's grievance is that though he was entitled to receive compassionate allowance under rule 33 of the L.I.C. of India (Employees) Pension Rules, 1985 (for short 'the Rules'), the same was denied to him by the respondents.

2. According to the petitioner, he joined the service of the respondents with effect from 1st July, 1965 as a Typist and he continued to be there till 1995. In the month of April 1995 his request for grant of 120 days leave was accepted and the leave was sanctioned. It is an undisputed fact that after obtaining the said leave the petitioner went abroad i.e. United States of America and did not return to resume the duty on expiry of the sanctioned period of leave. He wrote a letter dated 1st July, 1995 to respondent that it was not possible for him to return in near future and he expressed his desire to get voluntary retirement as per Pension Rules 1995. It appears from the record of this petition that the respondent treated this as unauthorized absenteeism. In view of the warning that was already given to the petitioner while sanctioning leave vide letter dated 3rd April, 1995. The respondent, thereafter thought it fit to initiate proceedings and served the petitioner with the charge-sheet in the United States. It may be also noted here that the petitioner, when he had sought the voluntary retirement from the service, was intimated by the Manager vide letter dated 8th August, 1995 that in view of the fact that he had not completed the age of 55 years, he could not be given permission to voluntarily retire from service and instead he could resign from the service. The Manager also requested the petitioner that if he so desired he should send to the corporation a fresh letter of resignation. Be that as it may, the fact remains that the respondent proceeded against the petitioner departmentally in his absence since the petitioner was in U.S.A. and he did not remain present during the course of the hearing of the inquiry. Ultimately, vide decision dated 28th August, 1997 he was ordered to be removed from the service. It appears that the petitioner in a petition filed before this Court earlier, being Special Civil Application No. 8667 of 1998 had prayed for quashing and setting aside the impugned order. The said petition was decided by the learned Single Judge of this Court by order dated 19th September, 2002. In the said petition the grievance with regard to non-payment of compassionate allowance, was also made by way of amendment in the relief clause.

2.1. It may also be noted here that the respondents had introduced the pension scheme for the

benefit of the retired employees of the Corporation known as L.I.C. of India (Employees) Pension Rule, 1995, which were though published in June 1995, were made effective with retrospective effect i.e. from 1st November, 1993. In the said Rules a provision of compassionate allowance under certain circumstances has been made and it is under this rule that the petitioner had made the demand of payment of said allowance to him.

2.2. While disposing of the earlier petition the learned Single Judge had observed that though monetary relief could be granted by this Court in a petition under Article 226 of the Constitution of India, considering the text of rule 33 it was the discretion of the concerned authority whether to grant compassionate allowance and, therefore, the learned Single Judge had thought it fit to allow the respondents to exercise the discretionary power after granting proper opportunity including giving personal hearing to the petitioner to represent his case for the payment of the said allowance.

2.3. It appears that subsequently the matter was again considered by the respondent and the petitioner by communication dated 5th December, 2002 was informed the decision taken by the concerned authority i.e. Divisional Manager. By the said letter it was intimated to the petitioner that the matter was examined by the competent authority in all its perspectives and it was found that it was not possible to consider the case of granting of compassionate allowance under rule 33 of the Rules. The petitioner thereafter wrote a letter dated 14th December, 2002 wherein he set-out the reasons for grant of the said allowance, namely that he had not committed any fraud nor he was involved in criminal case and that he had not committed any grave misconduct which would disentitle him to receive the said allowance. It appears that he was intimated by the Divisional Manager by letter dated 24th December, 2002 that decision disallowing the compassionate allowance was already forwarded to the higher authority for its consideration. It is the say of the petitioner that thereafter nothing was heard from the respondents.

3. Mr. C.N. Trivedi, learned advocate appearing for the petitioner has submitted before me that considering the facts and circumstances of the case this is a fit case where the petitioner ought to have been granted the said allowance, particularly because of the observations made by the learned Single Judge in order dated 19th September, 2002 passed in Special Civil

Application No. 8667 of 1998. He has further submitted that the authority was required to use discretion properly and not in slipshod manner. He has further submitted that the petitioner was meted out with discriminatory treatment in as much as in other cases such allowance has been paid; whereas the petitioner has been denied this benefit.

3.1. Mr. A.K. Clerk, learned advocate for the respondents has, however, submitted that there is no merit in the petition because the case of the petitioner has been reconsidered by the respondent - authority in view of the order passed by this Court on 19th September, 2002. Even after reconsideration of the said decision the authority has found that the petitioner did not deserve grant of this benefit and, therefore, that has been denied to him. He has further submitted that when the earlier petition had been disposed of by this Court wherein the same grievance was made, second petition on the same aspect cannot be entertained. He has, therefore, prayed that the petition be dismissed.

4. Rule 33 of the Rules reads as under :-

"33. Compassionate Allowance.- (1) An employee, who is dismissed or removed or compulsorily retired or terminated from service, shall forfeit his pension :

Provided that the authority competent to dismiss or remove or compulsorily retire or terminate him from service may, if -

(i) such dismissal, removal, compulsory retirement or termination is on or after the 1st day of November, 1993; and

(ii) the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination.

(2) The compassionate allowance sanctioned under the proviso to sub rule (1) shall not be less than the amount of the minimum pension payable under rule 36 of these rules."

This benefit is, therefore, payable to persons who are either dismissed or removed or compulsorily retired or terminated from the service on or after 1st November, 1993 and who have not become entitled to receive pension.

It also provides that in a case deserving special consideration for grant of 2/3rd of the pension which would have been admissible to become such employee on the basis of qualifying service rendered upto the date of his dismissal, removal or compulsory retirement or termination. A plain reading of this provision shows that it has to be given in a deserving case and to decide whether the concerned person deserves to receive compassionate allowance is a matter of discretion, which has to be exercised by the respondent authority alone. If in the discretion of the respondent authority it appears that in the event of dismissal/removal of an employee, he deserves special consideration, such authority may sanction to grant compassionate allowance. Precisely, keeping this factor in view, this Court on earlier occasion had observed in the order that though it was possible for this Court to issue writ of mandamus, it had thought it fit not to do so but to direct the concerned authority to reconsider case of the petitioner and to exercise its discretion in accordance with the provisions of rule 33 of the Rules. Mr. Trivedi has tried to submit that some indication is given by this Court in the earlier order for grant of the benefit to the petitioner. However, from the overall reading of the order, it clearly appears that this Court only wanted the respondent to reconsider and reapply its mind to the problem and exercise its discretion. This Court had also made it clear that the grant of compassionate allowance was a power conferred upon the concerned authority and it was a discretionary power which would be exercised in accordance with rule 33 of the Rules. Thus, the learned Judge had, while not deciding the petition on its merits, directed the respondents to reconsider its decision regarding refusal to pay the compassionate allowance to the petitioner.

4.1. It appears that the respondents have already reconsidered the issue whether the petitioner deserves to be granted compassionate allowance and upon examining the issue from all angles, it has come to the conclusion that it was not possible to grant him the said allowance. During the course of the submissions Mr. Trivedi has made a grievance that the petitioner was not granted personal hearing despite the order of this Court. No such contention has been taken in the petition. Not only that but when he was specifically asked whether petitioner would like to go before the authority to have a personal hearing, he has flatly refused to do so and has in no uncertain terms stated before the Court that the petitioner would not be inclined to have a personal hearing. In view thereof, the submission loses all its

ingredients.

5. When the concerned provision confers discretionary power upon the respondent for grant of compassionate allowance under particular circumstances, it is for that authority to examine the issue in accordance with the guidelines or the requirements of the said provision. When that has been done, this Court under Article 226 cannot interfere with the discretion of the authority and substitute decision of the authority with its own decision. So far the submission of Mr. Trivedi with regard to hostile discrimination is concerned, no such averment has been made in the petition. The averment with regard to discrimination is purely a question of fact which was required to be specifically stated in the petition to enable the otherside to meet with the same in the affidavit-in-reply. That has not been done and at the time of hearing, without any foundation such contention cannot be permitted to be raised. In view thereof, there is nothing before me to hold that the petitioner has been meted out discriminatory treatment by the respondent. When the Court finds that the power vested upon the concerned authority is exercised properly and in accordance with the relevant provisions, it will not be proper for this Court to interfere with the same. The scope of the judicial review in such event becomes very narrow, as has been laid down by the Apex Court as well as this Court.

6. In light of the aforesaid, this petition has no merit and it deserves to be dismissed. It is hereby ordered to be dismissed. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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